

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-23 are presently pending in this case. Claims 1-9, 12, and 13 are amended and new Claims 15-23 are added by the present amendment. As amended Claims 1-9, 12, and 13 and new Claims 15-23 are supported by the original disclosure,¹ no new matter is added.

In the outstanding Official Action, Claims 1 and 2 are objected to; Claims 1 and 4 were rejected under 35 U.S.C. §102(b) as anticipated by Matsumoto et al. (U.S. Patent No. 5,511,050, hereinafter "Matsumoto"); Claims 1, 4, and 7 were rejected under 35 U.S.C. §102(b) as anticipated by Higashiura et al. (U.S. Patent No. 6,167,017, hereinafter "Higashiura"); and Claims 2, 3, and 5 were rejected under 35 U.S.C. §103(a) as unpatentable over Matsumoto or Higashiura in view of Maeda et al. (U.S. Patent No. 6,628,599, hereinafter "Maeda"). Claim 6 was objected to as being dependent on a rejected base claim, but otherwise was indicated as including allowable subject matter if re-written in independent form. Claims 8-14 were allowed.

Applicants gratefully acknowledge the allowance of Claim 8-14 and the indication that Claim 6 includes allowable subject matter.

The abstract is amended herewith to place it in conformance with U.S. practice. No new matter is added.

Claims 11 and 12 are amended to correct informalities. No new matter is added.

Claims 1 and 2 are amended to recite "an optical-axial direction" and to replace "the latter" with "the optical recording medium." (Similar amendments are made to Claims 8 and 9.) Accordingly, the objection to Claims 1 and 2 is believed to be overcome.

¹See, e.g., the specification at page 18, line 2 to page 22, line 19, page 23 line 5 to page 24, line 6, and Claims 8-14.

With regard to the rejection of Claim 1 as anticipated by Matsumoto or Higashiura, those rejections are respectfully traversed.

Amended Claim 1 recites in part:

a recording area discrimination unit configured to detect a portion of the optical recording medium the light is focused on;

a diffraction unit provided between the light source and focusing unit and configured to diffract the light emitted from the light source so that zero-order light resulted from the diffraction is focused by the focusing unit on the optical recording medium while other diffracted light than the zero-order light goes to a focus shifted in the optical-axial direction not to be focused on the optical recording medium, *the diffraction unit configured to vary a diffraction efficiency of the light based on the portion of the optical recording medium detected by the recording area discrimination unit.*

With regard to Claims 2, 3, and 5, the outstanding Office Action conceded that neither Matsumoto nor Higashiura teach or suggest a diffraction unit configured to vary a diffraction efficiency of the light and cited variable optical element 5 of Maeda as describing this feature.² However, it is respectfully submitted that Maeda does not teach or suggest that variable optical element 5 varies a diffraction efficiency *based on which portion of the medium that the light is focused on*. In fact, it is respectfully submitted that Maeda does not include any element to determine which portion of a medium is being read from or recorded to. Thus, it is respectfully submitted that Maeda does not teach or suggest “a recording area discrimination unit” and “a diffraction unit” as defined in amended Claim 1. Consequently, Claim 1 (and Claims 2-7 dependent therefrom) is patentable over Matsumoto or Higashiura in view of Maeda.

New Claims 15-21 include similar subject matter to allowed Claims 8-14, but do not invoke 35 U.S.C. §112, sixth paragraph. Consequently, Claims 15-21 are also allowable.

²See the outstanding Office Action at page 4, line 14 to page 5, line 2.

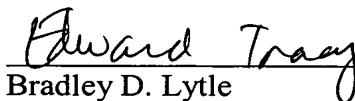
New Claim 22 is supported at least by original Claims 1 and 6. As new Claim 22 includes the subject matter of Claim 6, which was indicated as including allowable subject matter, new Claim 22 is allowable.

New Claim 23 is supported at least by original Claims 1 and 7. New Claim 23 recites "the diffraction unit being a phase-modulated type diffraction grating." The outstanding Office Action cited the modulated diffraction grating 5 of Higashiura as describing this element with respect to original Claim 7.³ However, Higashiura does not state that modulated diffraction grating 5 is a *phase* modulated diffraction grating. As modulated diffraction grating 5 could be an amplitude modulated diffraction grating, modulated diffraction grating 5 of Higashiura is *not* inherently "a phase-modulated type diffraction grating" as recited in new Claim 23. Accordingly, as Higashiura does not explicitly or inherently teach or suggest "a phase-modulated type diffraction grating," it is respectfully submitted that Claim 23 is patentable over the cited references.

Accordingly, the pending claims are believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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³See the outstanding Office Action at page 4, lines 1-2.